

REMARKS

Applicants are in receipt of Paper No. 10, yet another requirement for restriction and other election requirements, which are somewhat confusing and as onerous than the first requirements mailed September 30, 2002. With respect, applicants strenuously disagree with the requirements, and request their withdrawal. Applicants' position is outlined below in detail.

Acknowledgement by the PTO of the receipt of applicants' papers filed under Section 119 is noted.

First, the examiner has made a six-way restriction requirement, page 2 of Paper No. 10. Applicants do not see the difference between Groups I and V, i.e. they are exactly the same insofar as applicants can determine, except that Group I is broader than Group V, i.e. Group I is said to be directed to a process of treating plant matter and foodstuffs, whereas Group V is also said to be a process for treating plant matter and foodstuffs, wherein the foodstuffs are tubers, bulbs, and seeds, grains, etc. Therefore, to the extent that Groups I and V are different, the only difference is that Group I is generic to Group V. Restriction between a genus and sub-genus is absolutely improper! Applicants cannot elect one to the exclusion of the other.

Accordingly, applicants hereby provisionally and respectfully elect Group I, with traverse and without prejudice, and with the further understanding that the Group V claims 54 and 55 (as well as new claims 59 and 60) fall within Group I as they also are directed to a process of treating plant matter and foodstuffs. Applicants particularly insist that their election cover the treatment of **tubers**, and new claims 59 and 60 are added above and specifically directed to the elected subject matter.

As regards Groups II and III, applicants have now deleted claims 47 and 48, so that these Groups are no longer in issue.

Applicants traverse the requirement for the same reason as expressed in applicants' Reply of December 18, 2002. While the Office Action refers to unity of invention under PCT Rules 13.1 and 13.2, applicants believe and submit that the requirement does not follow such rules. The Special Technical Feature (STF) is not what is set forth in the Office Action, but instead is the common composition used in the claimed process as a disinfectant or a preservative, which is common to all the Groups. The requirement simply is not justifiable on the basis of unity of invention rules, and therefore it is respectfully traversed.

The Office Action further requires applicants to make two (2) separate elections of species from Group I. This requirement is also respectfully traversed.

Thus, applicants do not understand what the difference is between "(d) imparts storage stability", and "(e) extend shelf life." These are the same! How can applicants elect one and exclude the other when they are the same? The same is true with regard to "(k) losses in quality." Moreover, imparting storage stability, extends shelf life and prevents losses in quality and quantity, and this is done by (f) inhibiting premature sprouting, (g) rooting, (h) black-heart formation, (i) germination, and (j) blossoming. With respect, applicants will be forced to petition this requirement if the PTO continues to insist that all of these, including generic (d), (e) and (k), are separate species.

For the record, applicants hereby respectfully and provisionally elect, with traverse and without prejudice, imparting storage stability (with the understanding that this means the same as or covers extending shelf life and inhibiting losses in quality), which is generic to inhibiting premature sprouting, rooting, black-heart formation, germination and blossoming, whereby applicants' election

includes inhibiting premature sprouting, etc. as falling within the broad "imparting storage stability".

As regards the second required election of species, applicants have a similar traversal because (f) pre and post-harvest is generic to and covers the other designated "species". Accordingly, applicants hereby provisionally and respectfully elect, with traverse and without prejudice (f) pre and post-harvest, with the understanding that such election includes pre-planting and growing as being pre-harvest, and storage, distribution and marketing as being post-harvest. Again, it is not reasonable, not fair and not proper to require an election between a genus and a species.

As regards applicants' reasons for traversal, in addition to those stated immediately above, they are the same as expressed further above with respect to the restriction requirement, i.e. such election requirements are inconsistent with unity of invention under PCT Rules 13.1 and 13.2.

The Office Action has also required applicants to identify the claims which read on the elected species. These claims are not only newly added claims 59 and 60 which are rather specific, but also previously pending claims 1-9 (claims 10 and 11 were previously deleted), 12-46, 50-55, 57 and 58. Most of such claims are generic.

Applicants again respectfully request withdrawal of the various requirements and examination of all the claims on the merits. Applicants await the results of a first examination on the merits.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By



Sheridan Neimark  
Registration No. 20,520

SN:jec  
Telephone No.: (202) 628-5197  
Facsimile No.: (202) 737-3528  
G:\BN\M\MAKH\Ben-Yehuda 1\pto\AMD24FEB03.doc